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IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re:

JAMES JOEL HOLMAN and
CANDICE EVANGELINE HOLMAN,
Debtors.

Case No. 14-35381-rld7

DWIGHT and LAURA DANIELS,
husband and wife

Plaintiffs,

vs.

JAMES JOEL HOLMAN and
CANDICE EVANGELINE HOLMAN,
Defendants.

Adv. Proc. No. 14-03285-rld

**SUPPORTING BRIEF
RE: DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

ARGUMENT

The primary inquiry is whether the evidence presents a sufficient disagreement to require a trial, or whether it is so one-sided that one party must prevail as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

A party opposing a properly supported motion for summary judgment must present affirmative evidence of a disputed material fact from which a factfinder might return a verdict in its

1 - Supporting Brief RE: Defendants' Motion for Partial Summary Judgment

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1 favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).
2 Bankruptcy Rule 7056, which incorporates Federal Rule of Civil Procedure 56(e), provided that the
3 nonmoving party may not rest upon mere allegations or denials in the pleadings, but must respond
4 with specific facts showing there is a genuine issue of material fact for trial. Absent such response,
5 summary judgment shall be granted if appropriate. *See Celotex Corp v. Catrett*, 477 U.S. 317, 326-
6 27, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

7 Plaintiffs allege that defendants obtained money through false pretenses, false representations
8 or actual fraud, and as a result are not eligible for discharge under 11 USC § 523(a)(2)(A). “To find
9 the Debtor liable for fraudulent misrepresentation, the jury would have had to determine the Debtor
10 made a false representation with actual knowledge of its falsity.” *In re Hashemi*, 104 F3d 1122,
11 1125 (9th Cir. 1996); *Santos v. Souza*, Adv. Proc. Case No. 14-01059 (BK Ct. Dist. Mass, Dec. 22,
12 2014). Candice Holman never met plaintiffs and never spoke with or corresponded with plaintiffs
13 prior to the issuance of the loan. Candice Holman never provided any financial statements or
14 information to plaintiffs or made any representations to plaintiffs of any kind. Without any type of
15 communication with plaintiffs prior to the issuance of the loan, Candice Holman could not have
16 made any false representations or committed any actual fraud, as required by 11 USC §523(a)(2)(A)
17 in order to avoid a discharge.

18 Plaintiffs also allege that defendants obtained money through use of a materially false
19 statement in writing, and as a result are not eligible for discharge under 11 USC § 523(a)(2)(B).
20 Among other requirements, 11 USC § 523(a)(2)(B)(I) mandates “(iv) that the debtor caused [the
21 statement] to be made or published with intent to deceive.” A personal financial statement was
22 provided to plaintiffs. This financial statement was not prepared by Candice Holman, nor did she
23 sign or review it. As Candice Holman did not prepare, sign or review the financial statement, she
24 did not provide any information containing a statement that was materially false and there was no
25 intent to deceive, a requirement to avoid a discharge under 11 USC § 523(a)(2)(B).

1 **CONCLUSION**

2 The facts in this case do not support plaintiffs' contention that Candice Holman should be
3 denied a discharge based on 11 USC § 523(a)(2)(A)&(B). Based on the above, there is no genuine
4 issue of material fact and defendant Candice Holman is entitled to summary judgment dismissing
5 all claims against her.

6 DATED this 4 day of June, 2015.

7 LAW OFFICE OF PAUL HEATHERMAN PC

8
9 /s/ Paul B. Heatherman

10 Paul B. Heatherman - OSB #933000

11 Attorney for Debtors/Defendants
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CERTIFICATE OF SERVICE
Adversary Proceeding No. 14-03285-rld

I hereby certify that on June 4, 2015, I serve a true copy of the foregoing *Supporting Brief RE: Defendants Motion for Partial Summary Judgment*, via first class mail, on the following:

Darian A. Stanford
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Portland, OR 97204
Attorney for Plaintiffs

Dated: June 4, 2015.

/s/ Paul B. Heatherman
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